IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 8828 of 2001

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

==========

1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

==========

GUJARAT WATER SUPPLY AND SEWERAGE BOARD & 1-Petitioner(s)
Versus
DILIPKUMAR SHANTILAL BHATT - Respondent(s)

==========

Appearance :
MR HS MUNSHAW for Petitioners
MR TR MISHRA for Respondent

==========

CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 12/07/2007

ORAL JUDGMENT

1. The petitioner-Gujarat Water Supply and Sewerage Board, being aggrieved by the award dated 16.7.2001 passed by the Presiding Officer,

Labourt Court, Bhavnagar in Reference L.C.G. No. 52/92 directing reinstatement of the workman with 100% wages for the period pendente lite is before this Court.

2. The workman approached the Labour Court with a submission that in the years 1984, 1985 and 1986, he was working with the petitioner; in each year, he worked for more than 240 days and despite continuation of the work, on 25.10.86, he was illegally rentrenched. He prayed for reinstatement with full back wages.

3. The present petitioner appeared before the Labour Court, filed its written statement, submitting inter alia, that the workman was not retrenched or removed, but in fact, he abandoned the work. They also submitted that the workman was engaged in scarcity work, there was delay of six years in making of the Reference and the workman did not make any attempt to obtain some alternative work. They submitted that the workman was not entitled to anything.

4. The learned Labour Court, rejecting the defences observed that the workman was illegally

retrenched, he could not find any work, he continued to be unemployed, delay would only affect the right of back wages and as there was nothing against the workman, he was entitled to reinstatement with wages pendente lite.

5. Shri H.S. Munshaw, learned counsel for the petitioner establishment has raised identical defences before this Court, which I will take up one by one. So far as the question that whether the workman was illegally retrenched or left of his own is concerned, finding of the learned Labour Court is based on appreciation of the evidences that he was illegally retrenched. Such finding of fact cannot lightly be interfered by the High Court simply because yet another view may be possible. According to Shri Munshaw, as the workman did not ask for work in writing, it should be presumed that he left of his own. In the opinion of this Court, if somebody, after his termination does not go back to the master, then, it would not speak against him nor the Court would be entitled to presume that the workman left of his own.

6. It was next contended that present was scarcity work and as the scarcity work, as on today, is closed, direction for reinstatement could not have been issued.

7. From the statement of the witness examined by the present petitioner, it would be clear that even on the date of the statement of the witness, work was in progress, it was continuous and but for the present workman, other workmen were continuously working and were being paid. If such is the evidence, then, the Court is not required to consider that what would be the effect of subsequent closure of the scheme, cause of action accrued in favour of the workman on the date of illegal retrenchment and on the said date, work was in progress and others were being given work.

8. It was further submitted that the workman had approached the Labour Court with delay of six years, therefore, the Labour Court could not have awarded reinstatement. In the opinion of this Court, as no limitation is prescribed under the Industrial Disputes Act to make approach to

the competent Forum, the question of delay would not defeat justice but would only adversely affect the entitlement of the workman. In the present case, the learned Labour Court has not allowed back wages from 25.10.86 to 11.3.91, that is, up to the date of the Reference, for the delay, the workman has already been punished. It was also submitted that for the period pendente lite, full back wages ought not to have been granted, specially when the workman did not try to gain some work or earn some money. It is also submitted that the workman did not say that he was being maintained by others. While on the other hand, the workman had stated that he was living with his wife and children.

9. Shri Mishra, learned counsel for the workman, on the other hand, submitted that the workman might have been supported by some other persons and if there is no positive evidence that the workman was elsewhere gainfully employed, then, 100% wages would be the rule.

10. Taking into consideration that the workman did

not state before the lower court as to how he was maintaining himself nor stated before this Court that he was being maintained by others or by his children or his wife, I must hold that the workman would not be entitled to 100% back wages.

11. In a given case, the Court may refuse back wages on the principle of “no work no pay” but when the matter is pending before this Court, this Court has to adopt another approach and has to consider as to whether the case on hand is the one where 100% back wages could be awarded or 100% wages pendente lite should be awarded.

12. In the present case, the learned Labour Court in a very technical manner has awarded 100% wages from the date of the Reference, which, in the opinion of this Court could not have been awarded.

13. After taking into consideration the facts floating on the surface of the records and certain admissions made by the workman, I hold that the workman would be entitled to 50% wages for the period from 11.3.91 to 16.7.01, that is,

the date of the Reference and the date of the final award. The petition, on the merits, is dismissed but however, the wages pendente lite shall stand reduced to the extent indicated above. Rule is discharged accordingly. No costs. Interim relief, if any, is vacated.

[R.S. GARG, J.]

pirzada/-